

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13251, of Ulysses B. Auger, pursuant to Sub-section 8207.2 and Paragraph 8207.11 of the Zoning Regulations, for a special exception under Sub-section 3308.2 to construct roof structures which do not meet the setback and enclosure requirements (Sub-section 3308.2) and a variance from the prohibition against allowing roof structures which are not equal in height (Paragraph 3308.12) in a C-R District at the premises 1221 - 22nd Street, N.W., (Square 70, Lot 187).

HEARING DATES: June 11, 1980 and January 28, 1981

DECISION DATES: July 2 and September 3, 1980 & January 28, 1981
(Bench Decision)

FINDINGS OF FACT:

1. The subject property is located in a CR District on the east side of 22nd Street between M Street and Ward Place, N.W. The site borders on all three streets.
2. The site also borders on a thirty foot public alley which is parallel to 22nd Street. That alley runs for approximately 230 feet along the east side of the property, but does not extend along the full depth of the site.
3. The property is presently improved with a building housing a restaurant known as Blackies House of Beef. The applicant is presently constructing a hotel over and around the restaurant.
4. The Board previously considered this application and entered an Order dated October 31, 1980 granting the application for variance, but denying the special exception. Upon a motion for rehearing filed by the applicant and upon consideration of evidence submitted by the major tenant of the adjoining property to the east, the Board granted a rehearing for the entire case.
5. The roof structures which are the subject of this application are on a building devoted to hotel use, as permitted in the C-R District. The hotel building is L-shaped and has a length of approximately 350 feet parallel to 21st Street.
6. The applicant proposes to locate the penthouse at the northeast corner of the building adjacent to the eastern edge of the building. At the time of application and hearing, the edge of the building was also the lot line adjacent to a thirty foot public alley. The applicant proposed to close the alley. As of July 29, 1980, the alley was closed, the applicant added that land to the subject site, the setback requirements was satisfied as to this side of the penthouse, and no Board action is required.

7. The top of the stair penthouse located at the northeast corner of the building is at elevation 155.93. Since the elevation of the roof is 147.21, this portion of the penthouse is 8.72 feet in height above the roof. The roof of the main portion of the penthouse is at elevation 163.89, or a height of 16.68 feet above the roof. This proposal violates the requirement that all walls of a penthouse be of equal height, and a variance is thus requested.

8. The stair penthouse which is lower than the rest of the roof structure is required by code for access to the roof. Due to the design of the site, it could not be located elsewhere on the building. It could not be raised to the same height as the rest of the penthouse because it would then violate the setback requirements.

9. The penthouse has already been constructed. No reasonable purpose would be served by requiring its demolition, reduction in height or elevation. None of those options is practical without substantial redesign of the building.

10. Strict compliance with the Regulations would require the construction of two walls, approximately 16.5 feet high and eighty feet long, in order to connect the separate structures. The applicant estimated that the cost of constructing this additional 2,640 square feet of wall would be \$75,000. The applicant further testified that these walls would not house stairs, elevators, mechanical or other equipment.

11. The construction of the rooftop walls would benefit the applicant in no way and would restrict light, air, and ventilation to surrounding properties. The overall F.A.R. of the roof structure is .075, which is much smaller than the maximum permitted F.A.R. of .37.

12. The Department of Housing and Community Development by report, dated January 27, 1981, recommended approval of the application. The Department reported that the Zoning Regulations have the objective of reducing the number of unnecessary or extraneous structures above a building's roof, and thus avoiding unwelcome visual clutter. In so doing, the regulation insures that the concerns and rights of adjoining property owners, as well as the public served in a given area, are met. In the case under review, however, a strict interpretation to the effect that two penthouses be connected by two brick walls which serve no useful purpose except to comply with this provision appeared to the Department "to pervert the spirit if not the letter, of the regulation." The Department found that the existing two penthouses are well-designed and compatible. The Department found that to require additional walls, however, even apart from the unnecessary expense, would clearly adversely effect the only contiguous building and would reduce light and air without measurable benefit to anyone. The Board so finds.

13. There was no report of Advisory Neighborhood Commission 2A on this application.

14. There was no opposition to the granting of this application.

CONCLUSIONS OF LAW AND OPINION:

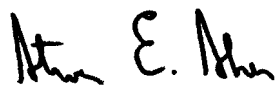
Based on the findings of fact and the evidence of record, the Board concludes that the applicant is seeking a variance and a special exception. As to the variance, the Board concludes that the requested variance is an area variance, the granting of which requires the showing of an exceptional or extraordinary condition of the property which creates a practical difficulty for the owner. The Board concludes that the design of the building requires that the stair penthouse be located as shown on the plans and that there is no way to provide the required stair to the roof without also requiring a variance. The Board concludes that the practical difficulty is thus inherent in the property. The Board further notes that the structure meets the required setbacks, and would not be visible from the ground, and there is thus no useful purpose to be accomplished by denying the variance.

As to the requested special exception relief, the Board finds that to compel strict adherence to the requirements for roof structures would force the construction of a more imposing structure and would lessen light and air to the surrounding owners. The shape and size of the hotel dictates that separate roof structures are more desirable and practical than a continuous roof. The construction of the rooftop walls would be impractical in that they would neither house mechanical equipment nor serve any other useful function. To compel such construction would also impose an unnecessary and excessive financial burden upon the applicant. The Board concludes that the relief can be granted as in harmony with the general purpose and intent of the Zoning Regulations and will not tend to affect adversely the use of neighborhood property. It is therefore hereby ORDERED that the application is GRANTED.

VOTE: 3-0 (William F. McIntosh, Charles R. Norris and Connie Fortune to GRANT; Douglas J. Patton not present, not voting).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: _____


STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: 30 APR 1981.

BZA APPLICATION NO. 13251
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THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF LICENSES, INVESTIGATIONS, AND INSPECTIONS.

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13251, of Ulysses G. Auger, pursuant to Sub-section 8207.2 and Paragraph 8207.11 of the Zoning Regulations, for a special exception under Sub-section 3308.2 to construct roof structures which do not meet the set back and enclosure requirements (Sub-section 3308.2) and a variance from the prohibition against allowing roof structures which are not equal in height (Paragraph 3308.12) in a CR District at the premises 1221 - 22nd Street, N.W., (Square 70, Lot 187).

HEARING DATE: June 11, 1980

DECISION DATES: July 2 and September 3, 1980

FINDINGS OF FACT:

1. The subject property is located in a CR District on the east side of 22nd Street between M Street and Ward Place, N.W. The site borders on all three streets.

2. The site also borders on a thirty foot public alley which is parallel to 22nd Street. That alley runs for approximately 230 feet along the east side of the property, but does not extend along the full depth of the site.

3. The property is presently improved with a building housing a restaurant known as Blackies House of Beef. The applicant is presently constructing a hotel over and around the restaurant.

4. The applicant was issued building permit No. B-273710 to construct the 350 room hotel. The proposed roof structure, as shown on the plans presented for the permit, met all the criteria for roof structures to be approved as a matter-of-right. The roof structure was approved by the Office of Planning and Development on December 21, 1978.

5. The applicant now proposes to modify the approved plans with respect to the penthouses. Such modification requires Board action as discussed below.

6. The applicant proposes to eliminate approximately eighty feet of enclosing walls along the northern portion of the building. These walls do not enclose any stairs, elevators or mechanical equipment, but were designed to meet the requirement of the Zoning Regulations that there be only one roof structure in one enclosure on the roof. If these walls are eliminated, there will be a separate stair and elevator penthouse at the northeast corner of the building near Ward Place. The main portion of the penthouse will be near the 22nd Street side of the building. The applicant requests a special exception to have more than one roof structure.

7. The applicant proposes to locate the penthouse at the northeast corner of the building adjacent to the eastern edge of the building. At the time of application and hearing, the edge of the building was also the lot line adjacent to a thirty foot public alley. The applicant proposed to close the alley. As of July 29, 1980, the alley was closed, the applicant had added that land to the subject site, the setback requirement have been satisfied as to this side of the penthouse, and no Board action is required.

8. The top of the stair penthouse located at the northeast corner of the building is at elevation 155.93. Since the elevation of the roof is 147.21, this portion of the penthouse is 8.72 feet in height above the roof. The roof of the main portion of the penthouse is at elevation 163.89, or a height of 16.68 feet above the roof. This proposal violates the requirement that all walls of a penthouse be of equal height, and a variance is thus requested.

9. The stair penthouse which is lower than the rest of the roof structure is required for access to the roof. Due to the design of the site, it could not be located elsewhere in the building. It could not be raised to the same height as the rest of the penthouse because it would then violate the setback requirements.

10. The penthouse has already been constructed. No reasonable purpose would be served by requiring its demolition, reduction in height or elevation. None of those options is practical without substantial redesign of the building.

11. The applicants' architect and other representatives testified at the hearing that the applicant needed to obtain a building permit in an expeditious manner, in order to meet certain deadlines required by his financing commitment. The architect testified that the building could be built as shown on the approved plans.

12. The applicant presented no evidence that, if he were required to construct the building in accordance with the plans originally approved, full compliance with the enclosure requirements would be unduly restrictive, prohibitively costly or unreasonable. In fact, the applicant's representative testified that they were prepared to construct the building as originally approved.

13. There was no report from Advisory Neighborhood Commission - 2A.

14. There was no opposition to the application.

CONCLUSIONS OF LAW AND OPINION:

Based on the findings of fact and the evidence of record, the Board concludes that the applicant is seeking a variance and a special exception. As to the variance, the Board concludes that the requested variance is an area variance, the granting of which requires the showing of an exceptional or extraordinary condition of the property which creates a practical difficulty for the owner. The Board concludes that the design of the building requires that the stair penthouse be located as shown on the plans and that there is no way to provide the required stair to the roof without also requiring a variance. The Board concludes that the practical difficulty is thus inherent in the property. The Board further notes that the structure meets the required setbacks, and would not be visible from the ground, and there is thus no useful purpose to be accomplished by denying the variance.

As to the special exception, the Board concludes that in order to be granted such an exception, the applicant must demonstrate that he has complied with the requirements of Section 3308 and Sub-section 8207.2. The Board concludes that the applicant in this case has not met his burden of proof and has not so demonstrated.

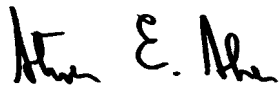
The Board is further greatly disturbed by the practice employed by the applicant in this case. Drawings were filed with the Department of Licenses Investigations and Inspections which met the requirements of the Zoning Regulations. These drawings were filed in order to obtain a building permit and start construction, while at the same time, the applicant clearly knew that he did not desire to construct the building in accordance with those plans, and that he hoped the Board would approve modifications to the penthouse prior to construction reaching the roof. The Board strongly believes that such a procedure is contrary to the intent and proper functioning of the zoning process, and the Board will not be a willing party to such a procedure.

It is therefore ORDERED that the special exception is DENIED, the variance is GRANTED and the penthouse shall be built as shown on the plans originally approved for a building permit.

VOTE: 3-0 (Charles R. Norris, Connie Fortune and Leonard L. McCants to GRANT the exception and DENY the variance, William F. McIntosh and Ruby B. McZier not present, not voting).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: 31 OCT 1980

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

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